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UNITED STATES DISTRICT COURT  
DISTRICT OF NEW JERSEY

LISSA CANAVAN et al.,

Plaintiffs,

v.

STEPHEN HARBECK et al.,

Defendants.

Hon. Faith S. Hochberg

Civil Action No. 10-954 (FSH)

BRIEF IN SUPPORT OF MOTION TO SUBSTITUTE

Plaintiffs allege that Defendants, directors of the Securities Investor Protection Corporation (“SIPC”), adopted an unlawful method for reimbursing Plaintiffs for the losses they suffered at the hands of Bernard Madoff. Two of the

Defendants, David G. Nason and David J. Stockton, are federal employees and served on the SIPC by virtue of their federal employment.

The Federal Tort Claims Act provides that a suit against the United States shall be the exclusive remedy for persons with claims for damages resulting from the negligent or wrongful acts or omissions of federal employees taken within the scope of their office or employment. *See* 28 U.S.C. § 2679(b)(1). The torts alleged in the Complaint fall within this provision.

Title 28 U.S.C. Section 2679(d)(2) provides that upon certification by the Attorney General that a federal employee was acting within the scope of his employment at the time of the incident out of which a state law claim arises, any civil action arising out of the incident *shall* be deemed an action brought against the United States, and the United States *shall* be substituted as sole defendant with respect to that claim. The Attorney General has delegated certification authority to any Director of the Torts Branch, Civil Division, Department of Justice. *See* 28 C.F.R. § 15.4. Pursuant to this authority, Phyllis J. Pyles, Director of the Torts Branch, has certified that both David G. Nason and David J. Stockton were acting within the scope of their employment when they performed the acts that are the subject of the Complaint. *See* Ex. A (Certification of Scope of Employment (April 9, 2010)).

Accordingly, this action must be dismissed as to Defendants David G. Nason and David J. Stockton, and the United States must be substituted for them as a Defendant.

DATED: April 9, 2010.

Respectfully submitted,

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